DEPARTMENT OF HOMELAND SECURITY
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2002-078

FINAL DECISION

Attorney-Advisor:

This is a proceeding under the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. It was docketed on March 29, 2002, upon the BCMR's receipt of the applicant's request for correction.

This final decision, dated April 8, 2003, is signed by the three duly appointed members who were designated to serve as the Board in this case.

APPLICANT'S REQUEST AND ALLEGATIONS

The applicant asked the Board to correct his discharge certificate to reflect his legal name, instead of the name under which he enlisted in the Coast Guard. The applicant alleged that he entered the Coast Guard and served during World War II under his brother's name. In support of his application, he provided a copy of his birth certificate, dated October xx, 192x and showing XXXXXX XXXXXX XXXXXX as his full legal name, and a copy of a special order dated December xx, 195x from the United States Air Force, documenting the name change of one XXXXXX X. XXXXXX to XXXXXX XXXXXX XXXXXX in Air Force records. He alleged that the Board should find it in the interest of justice to consider his application "because [his] legal name should be on [his] honorable discharge [certificate]."

SUMMARY OF THE RECORD

On January 19, 1945, XXXXXX XXXXXX XXXXXX enlisted as an apprentice seaman for three years in the Coast Guard Reserve. All of his enlistment documents were signed with that name and show his date of birth as May x, 192x. His enlistment contract shows that he presented a birth certificate to his recruiting officer, who noted that the document was accurate. Because the birth certificate he presented indicated that he was xx years and xx months old, his record also contains a "consent, declaration, and oath of parent or guardian" form, which was signed by his mother and, in part, certified the following:

> And I, the said … XXXXX XXXXX XXXXX do solemnly swear (or affirm) that I am the … mother of the said … XXXXXX XXXXXX XXXXXX to be enlisted by my consent as … Apprentice Seaman (R), and that he has no other legal guardian but myself. So help me God.

Also on January 19, 1945, XXXXXX XXXXXX XXXXXX was ordered to active duty and transferred to a Coast Guard station for training. He served continuously until being honorably discharged by reason of convenience of the government on May 11, 1946. At the time of his separation, he was serving as a seaman first class and had a total of 1 year, 3 months, and 23 days of creditable service.

VIEWS OF THE COAST GUARD

On August 16, 2002, the Chief Counsel provided the Coast Guard's comments to the Board. He attached to his advisory opinion a memorandum on the case prepared by Coast Guard Personnel Command (CGPC). In concurring with the analysis of CGPC, the Chief Counsel recommended that the Board deny the applicant's request.

The Chief Counsel argued that the application should be dismissed for untimeliness. He stated that under 10 U.S.C. 1552 (b) and 33 C.F.R. 52.22, the Board is required to deny an application that is not filed within three years after the alleged error was or should have been discovered, unless the Board decides to waive this requirement in the interest of justice. In making a determination whether to waive the statute of limitations, the Board must consider the reasons for the delay and make a cursory review of the potential merits of the claim. *See* Dickson v. Secretary of Defense, 68 F.3d 1396 (D.C. Cir. 1995).

The Chief Counsel argued that the applicant has submitted no reason why his application should now be accepted. He further stated that the applicant has offered no substantial evidence that the Coast Guard committed either an error or an injustice in issuing his discharge certificate.

The Chief Counsel asserted that the Coast Guard does not amend service records to reflect changes in name that occurred after a member has left the service. COMDTINST M1900.4D (stating that "[t]he DD form 214 provides the member and the

service with a concise record of a period of service with the Armed Forces at the time of the member's separation or discharge.") He argued that because the name "XXXXXX X. XXXXXX" is reflected throughout the applicant's service record, it is clearly established that the applicant had assumed that name, even if it was not his legal name.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On August 19, 2002, the Chair sent a copy of the views of the Coast Guard to the applicant and invited him to respond within 15 days. No response was received by the Board within the given time to respond.

On January 29, 2003, in a telephone conversation with the Attorney Advisor of the Board, the applicant explained that his brother, XXXXXX XXXXXX XXXXXX, knew that the applicant enlisted in the Coast Guard under his (XXXXXX XXXXXX XXXXXX's) name. He also stated that his brother never served in the Coast Guard during World War II or at any time. The applicant was granted an extension of time to March 1, 2003 to submit evidence in corroboration of his claim. However, the Board received no additional evidence from the applicant.

APPLICABLE LAW

The Commandant issued Personnel Bulletin No. 57-44, in effect from April 6, 1944 to May 26, 1948, which provided instructions on completing a member's discharge papers. No specific instruction is provided regarding a member's name. Under current regulations in COMDTINST M1900.4D, the DD form 214 is supposed to show the member's legal name at the time of his discharge.

FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusions on the basis of the applicant's military record and submissions, the Coast Guard's submission, and applicable law:

1. The Board has jurisdiction concerning this matter pursuant to 10 U.S.C. § 1552.

2. Under 10 U.S.C. § 1552 (b), an application must be filed with the Board within three years of the date the alleged error or injustice was discovered or should have been discovered. XXXXXX XXXXXX XXXXXX was discharged from the Coast Guard Reserve on May 11, 1946 and the applicant filed his application for the correction more than fifty years later on March 4, 2002. Contrary to the applicant's claim that he did not discover the alleged error until February 15, 2002, the alleged error should have

been discovered in May 1946, when he asserted that he signed and received his discharge papers. Thus, his application is untimely.

3 Pursuant to 10 U.S.C. § 1552, the Board may waive the three-year statute of limitations if it is in the interest of justice to do so. The interest of justice is determined by taking into consideration the reasons for delay and conducting a cursory review of the merits of the case. *See* Allen v. Card, 799 F. Supp. 158, 164 (D.C.C. 1992). The Board's regulations state that "[i]f an application is untimely, the applicant shall set forth reasons in the application why its acceptance is in the interest of justice. An untimely application shall be denied unless the Board finds that sufficient evidence has been presented to warrant a finding that it would be in the interest of justice to excuse the failure to file timely." 33 C.F.R. § 52.22. Although the applicant has not offered a persuasive reason for his not applying sooner, a cursory review of the record indicates that in 195x, the Air Force granted a name change correction that is identical to the applicant's request of the Board. Therefore, the Board finds that it is in the interest of justice to waive the statute of limitations in this case.

4. The Board notes that the applicant submitted a copy of the applicant's own birth certificate and a copy of a special order from the Air Force confirming a change of name on one XXXXXX X. XXXXXX's Air Force records. However, the Board finds that these submissions are insufficient in and of themselves to prove that the Coast Guard erred or committed an injustice in issuing an honorable discharge certificate in the name "XXXXXX XXXXXX XXXXXX". There is insufficient evidence in the record to prove that the Air Force document necessarily pertains to the XXXXXX X. XXXXXX who served in the Coast Guard or to the applicant, XXXXXX XXXXXX XXXXXX. The applicant could have, but failed to submit copies from his Air Force record or affidavits that would have proved that he is in fact the XXXXXX XXXXXX XXXXXX who served in the Coast Guard Reserve from January 19, 1945 to May 11, 1946.

5. Moreover, the Coast Guard record at issue contains a notice of separation, which is authenticated with the signature of XXXXXX X. XXXXXX and confirms in item 1 (listing last name, first name, and middle name), the name he used during his active duty service. Given the authentication of information on the separation document and the lack of persuasive evidence to the contrary, the Board is compelled to presume administrative regularity in the Coast Guard's preparation of the record. *See* Arens v United States, 969 F.2d 1034, 1037 (Fed. Cir. 1992); Sanders v. United States, 594 F.2d 804, 813 (Ct. Cl. 1979). Consequently, the Board finds that the applicant has failed to prove by a preponderance of the evidence that the information contained in the military record of XXXXXX XXXXXX XXXXXX is in error or unjust.

6. Accordingly, the applicant's request should be denied.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of former XXX XXXXXX XXXXXX XXXXXX, xxx-xxx, (also known as XXXXXX XXXXXX XXXXXX XXX XX XXXX) USCGR, for the correction of his military record is denied.